IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MELVIN L. CRAWLEY	)	
	)	**Civil Action No. 1:CV-07-782**
Plaintiff,	)	
	)	
v.	)	**(Chief Judge Yvette Kane)**
	)	
NORFOLK SOUTHERN CORP.	)	
	)	**ELECTRONICALLY FILED**
Defendant.	)	

MOTION OF DEFENDANT NORFOLK SOUTHERN CORPORATION TO DISMISS CERTAIN OF PLAINTIFF'S TITLE VII CLAIMS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, TRANSFER THOSE CLAIMS, AND TO TRANSFER PLAINTIFF'S REMAINING CLAIMS UNDER TITLE VII AND SECTION 1981

NOW COMES Defendant Norfolk Southern Corporation ("NS"), by its attorneys, and moves the court, pursuant to Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. §§ 1404 and 1406, to dismiss for improper venue or, in the alternative, transfer Plaintiff Melvin Crawley's Title VII claims alleging discriminatory demotion, compensation and failure to promote to positions outside this district, and to transfer Crawley's Section 1981 claims and his Title VII claim for failure to promote to positions located in Harrisburg. In support of this Motion, NS states as follows:

1. Plaintiff Melvin Crawley ("Crawley") is a current employee of Defendant NS.

2. On April 27, 2007, Crawley filed his Complaint ("Complaint") against NS, alleging that NS has discriminated and/or retaliated against him and committed numerous violations of Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e, et seq., and the Civil Rights Act of 1866, 42 U.S.C. § 1981.

3. Specifically, Crawley has brought claims under Title VII, including discriminatory demotion, compensation, and failure to promote claims, and claims under § 1981, including discriminatory demotion and discriminatory/retaliatory compensation and failure to promote claims.

4. At the heart of Crawley's lawsuit is NS's decision to demote him in October 2005 from his position in Roanoke, Virginia as Division Superintendent to the position of Superintendent of Terminals, Columbus, Ohio. The material events giving rise to Crawley's demotion and other claims occurred in Roanoke, which is in the Western District of Virginia. The witnesses to and the relevant documents concerning those events are also located in Roanoke or elsewhere in Virginia.

5. In contrast, none of the material events occurred, and none of the witnesses and documents relevant to Crawley's claims are located in the Middle District of Pennsylvania. Crawley has never been stationed in this district, and he does not live here. The only connection that this district has to this lawsuit is Crawley's claim that NS failed to select him for promotion to "numerous upper management positions," two of which were located in Harrisburg.

6. As a general rule, venue must be established for each claim in a complaint. Lomanno v. Black, 285 F. Supp. 2d 637, 641 (E.D. Pa. 2003). However, under Title VII's exclusive venue provision, 42 U.S.C. § 2000e-5(f)(3), this Court is not a proper venue for Crawley's Title VII claims alleging discriminatory demotion, compensation or failure to promote to positions located outside this district. Accordingly, Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406 require that those claims be dismissed or, in the alternative, transferred to a district in which they initially could have been brought.

7. Crawley's remaining claims (Title VII claim for failure to promote to positions in Harrisburg, PA and his three § 1981 claims) have no meaningful relationship to this district. Thus, this Court should exercise its authority under 28 U.S.C. § 1404(a), which permits a transfer "for the convenience of the parties and

witnesses, and in the interest of justice," and transfer those claims, along with the claims for which venue is lacking, to the Western District of Virginia.

8. The Western District of Virginia is an appropriate forum both for Crawley's § 1981 claims under the general venue provision, 28 U.S.C. § 1391(b), and for his Title VII claims under 42 U.S.C. 2000e-5(f)(3).

9. As explained in the accompanying Memorandum, the convenience of the parties and the interests of justice, along with the various private and public interests that courts must weigh when considering a transfer, warrant a transfer of Crawley's lawsuit to the Western District of Virginia.

10. Counsel for Defendant Norfolk Southern has requested the concurrence of Lori B. Kisch, counsel for Plaintiff Melvin L. Crawley, and Ms. Kisch does not concur with this Motion. See Certificate of Non-Concurrence attached hereto.

WHEREFORE, for the foregoing reasons, Defendant Norfolk Southern Corporation respectfully requests that this Court (i) dismiss for improper venue or, alternatively, transfer Crawley's Title VII claims for unlawful demotion, compensation and failure to promote to positions outside this district to the Western District of Virginia pursuant to 28 U.S.C. § 1406, and (ii) transfer his remaining claims to that district pursuant to 28 U.S.C. § 1404.

Respectfully submitted,

By: s/ Thomas G. Collins

James S. Whitehead, IL 3004333
Brian P. Guarraci, IL 6277583
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
Tel: (312) 853-7000
Fax: (312) 853-7036
jwhitehead@sidley.com
bguarraci@sidley.com

Attorneys for Defendant Norfolk Southern Corporation

Thomas G. Collins, PA 75896
BUCHANAN INGERSOLL & ROONEY PC
One South Market Square, 3rd FL
213 Market Street
Harrisburg, PA 17101-2132
Tel: (717) 237-4843
Fax: (717) 233-0852
thomas.collins@bipc.com

Attorneys for Defendant Norfolk Southern Corporation

Dated: July 2, 2007

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v.	)	**(Chief Judge Yvette Kane)**
	)	
NORFOLK SOUTHERN CORP.	)	
	)	
Defendant.	)	

CERTIFICATE OF NON-CONCURRENCE

Defendant's counsel has contacted Lori B. Kisch, counsel for Plaintiff Melvin L. Crawley, who does not concur with Defendant Norfolk Southern Corporation's Motion To Dismiss Certain Of Plaintiff's Title VII Claims For Improper Venue Or, In The Alternative, Transfer Those Claims, And To Transfer Plaintiff's Remaining Claims Under Title VII And Section 1981.

Attorneys for Defendant Norfolk Southern Corporation

James S. Whitehead, IL 3004333
Brian P. Guarraci, IL 6277583
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
Tel: (312) 853-7000
Fax: (312) 853-7036
jwhitehead@sidley.com
bguarraci@sidley.com

Attorneys for Defendant Norfolk Southern Corporation

By: s/ Thomas G. Collins
Thomas G. Collins, PA 75896
BUCHANAN INGERSOLL & ROONEY PC
One South Market Square, 3rd FL
213 Market Street
Harrisburg, PA 17101-2132
Tel: (717) 237-4843
Fax: (717) 233-0852
thomas.collins@bipc.com

CERTIFICATE OF SERVICE

I, Thomas G. Collins, one of the attorneys for Defendant Norfolk Southern Corporation, certify that I caused copies of the attached to be served upon:

Frank P. Clark
Clark & Krevsky, LLC
P.O. Box 1254
Camp Hill, PA 17001-1254

Lori B. Kisch
Keir S. Bickerstaffe
Wiggins, Childs, Quinn & Pantazis, PLLC
2031 Florida Avenue, N.W., Suite 30
Washington, D.C. 20009

this 2nd day of July, 2007 through the Court's electronic filing system.

s/ Thomas G. Collins
Thomas G. Collins